Filed 9/27/16 Marriage of Yarosh CA2/3

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re the Marriage of LAURENCE YAROSH and MARIA BLANCO YAROSH.	B267897
LAURENCE YAROSH, Petitioner and Appellant, v. MARIA BLANCO YAROSH, Respondent.	(Los Angeles County Super. Ct. No. BD570994)

APPEAL from a judgment of the Superior Court of Los Angeles County, Mark A. Juhas, Judge. Affirmed.

Laurence Yarosh, in pro. per., for Petitioner and Appellant.

Boyd Law, Karie J. Boyd, Thomas D. Georgianna and Matt R. Cadwell, for Respondent.

In this marital dissolution action between Laurence Yarosh and Maria Blanco Yarosh, Laurence[1] appeals from the judgment on reserved issues. He contends the trial court erred by finding Maria's healthcare subsidy is her separate property, failing to equally divide certain community property assets (including the marital residence), and denying his request for attorneys' fees and costs. We conclude Laurence has failed to provide this court with an adequate record, forfeited his claims, or failed to affirmatively demonstrate error. Accordingly, we affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

We glean the following from the limited and incomplete appellate record.

Laurence and Maria were married in December 1986 and separated in July 2012. They are parents of two adult children, Nicholas and Carlyn.

Fourteen years before the parties were married, or in 1972, Maria began working as a registered nurse for UCLA (University). She retired from the University in July 2014, when she was 67 years old. Under the University's retirement plan, employees hired before 1990 would be eligible for certain healthcare benefits upon their retirement. Specifically, those employees would receive 100 percent of the University's contribution toward their medical and dental monthly premiums if they were at least 55 years old, and had at least five years of "UCRP service credit" when they retired. Maria's entitlement to 100 percent of the University's contribution toward her healthcare premiums upon retirement at age 55 or later, and after five years of service credit, did not change during her employment with the University. However, once she met these eligibility requirements, she did not accrue additional post-retirement healthcare benefits from the University. After she retired in 2014, the University began

[1] Since the parties and their children have the same surname, we refer to them by their first names. We intend no disrespect.

contributing $590.85 and $43.50, respectively, toward Maria's medical and dental premiums.[2] Her share of the premiums was $132.96.

According to the register of actions, Laurence filed a petition to dissolve the marriage in September 2012. The marriage was dissolved by a status only judgment of dissolution in June 2014.

Before proceeding with trial on the remaining unresolved issues, the parties entered into a "Stipulation/Partial Settlement Agreement and Order Thereon" concerning the value of the Monte Mar Drive marital residence, spousal support, reimbursement claims, as well as the division of bank accounts, pension plans, and life insurance policies. This document was drafted by Laurence's attorney. Among other things, the parties agreed that the value of the residence was $1,175,000, and that the community property interest in Maria's University pension "shall be divided equally by way of Qualified Domestic Relations Order (QDRO)." On the last page, the parties noted that the settlement agreement is enforceable under Code of Civil Procedure section 664.6. The court approved the settlement agreement on June 6, 2014.

Thereafter, a four-day trial was held on November 25, 2014, December 1, 2014, December 17, 2014, and December 23, 2014. Testimony and evidence were presented on these dates. Apart from a partial transcript from December 17, 2014, the record on appeal does not contain a transcript of the oral proceedings or any exhibit that was received into evidence during the trial.

In March 2015, the parties stipulated that the deposition testimony of Ina Potter, counsel for the University, shall be admitted into evidence without further foundation. This stipulation also noted that all attachments to Potter's deposition, as well as email correspondence and attachments from Potter to counsel, "shall be included with the deposition testimony and shall likewise be admitted as evidence without further

---

[2] Including one of the parties' children, the amounts contributed by the University were $1,063.53 and $87.91, respectively, toward the medical and dental premiums. The University's contribution toward the child's healthcare premiums will stop when the child turns 26.

foundation." Based on Potter's deposition, in April 2015 the court determined that the healthcare subsidy provided by the University to Maria is her separate property. This ruling was incorporated into the judgment on reserved issues.

In written motions filed in April 2015, both parties sought an award of attorneys' fees and costs. In particular, Laurence sought $97,284.34 in fees and costs pursuant to four separate code sections, including Family Code sections 2030 and 271. Laurence justified the request by noting that the case was "highly complex and hard fought [involving] complicated issues of tracing going back over 25 years." In May 2015, the court denied the parties' dueling requests for attorneys' fees and costs. The court explained that "[f]rom the trial, as well as reading the various pleadings, it does not appear to the court that for various reasons a fee award either way is appropriate." The court noted that Laurence appeared to be "in sound financial health" based on his liquid assets, employment, and entitlement to a portion of Maria's pension.

The court conducted an additional hearing on August 17, 2015; the transcript from that oral proceeding is not in the appellate record. In a minute order issued the next day, the court stated that its ruling "is to be read in conjunction with the orders made in court on August 17, 2015." The minute order went on to deny Laurence's request for prejudgment interest, additional funds from the marital residence, and the termination of *Watts* charges[3] after December 31, 2014.

The judgment on reserved issues was entered on October 5, 2015. This timely appeal followed.

---

[3] Where one spouse has the exclusive use of a community asset during the period between separation and trial, that spouse may be required to compensate the community for the reasonable value of that use. The right to such compensation is commonly known as a *Watts* charge. (See *In re Marriage of Falcone & Fyke* (2012) 203 Cal.App.4th 964, 978, citing *In re Marriage of Watts* (1985) 171 Cal.App.3d 366, 374 (*Watts*).)

DISCUSSION

1. The incomplete record is fatal to Laurence's appeal.

It is well-settled that "[a]ppealed judgments and orders are presumed correct, and error must be affirmatively shown." (*Hernandez v. California Hospital Medical Center* (2000) 78 Cal.App.4th 498, 502, citing *Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) As the party challenging the court's presumably correct findings and rulings, Laurence is required "to provide an adequate record to assess error." (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295.) "In numerous situations, appellate courts have refused to reach the merits of an appellant's claims because no reporter's transcript of a pertinent proceeding or a suitable substitute was provided." (*Foust v. San Jose Construction Co., Inc.* (2011) 198 Cal.App.4th 181, 186.) Certainly, we are mindful that Laurence is representing himself on appeal. However, his status as a party appearing in propria persona does not provide a basis for preferential consideration. A self-represented party is to be treated like any other party and is entitled to the same, but no greater consideration than other litigants and attorneys. (See *Bianco v. California Highway Patrol* (1994) 24 Cal.App.4th 1113, 1125.) As we discuss below, Laurence has forfeited his claims by failing to provide an adequate record for appellate review.

A fatal problem with this appeal is that Laurence failed to provide us with the reporter's trial transcript for November 25, 2014, December 1, 2014, and December 23, 2014. And the trial transcript that was provided to us for December 17, 2014 is incomplete--it does not include the testimony of any witness. In addition, we have no exhibit that was marked and received into evidence on any of the trial dates.[4] Because the trial court denied the parties' requests for attorneys' fees and costs based, in part, on consideration of the testimony and evidence presented at trial, Laurence has forfeited any challenge to the denial of his request for fees and costs.

---

[4] Although the index to Appellant's Appendix lists "Petitioner's trial exhibit 103 (Anfuso list)," we cannot determine if that document was ever admitted into evidence on any of the trial dates.

Laurence's additional contention that the court failed to make material findings is without merit. When, as here, the trial court conducts a bench trial on a question of fact, the court must prepare a statement of decision upon a party's timely request. (Code Civ. Proc., § 632; *Acquire II, Ltd. v. Colton Real Estate Group* (2013) 213 Cal.App.4th 959, 970 (*Acquire II*).) The statement must explain " 'the factual and legal basis for [the court's] decision as to each of the principal controverted issues at trial. . . . ' " (*Ibid.*) However, no statement of decision is required if the parties fail to timely and properly request one. (*Acquire II*, at p. 970.) Here, Laurence has not pointed us to any request for a statement of decision in the record that complied with the requirements of Code of Civil Procedure section 632. "A party's failure to request a statement of decision when one is available has two consequences. First, the party waives any objection to the trial court's failure to make all findings necessary to support its decision. Second, the appellate court applies the doctrine of implied findings and presumes the trial court made all necessary findings supported by substantial evidence. [Citations.] This doctrine 'is a natural and logical corollary to three fundamental principles of appellate review: (1) a judgment is presumed correct; (2) all intendments and presumptions are indulged in favor of correctness; and (3) the appellant bears the burden of providing an adequate record affirmatively proving error.' " (*Acquire II, supra*, 213 Cal.App.4th at p. 970.)

Laurence also failed to provide us with a transcript from the hearing held on August 17, 2015. That hearing is important because Laurence argues that the court erred by failing to equally divide certain community property assets and failed to award him interest on the unequalized value of the community property. However, the court's denial of Laurence's request for interest, additional funds from the marital residence, and the termination of *Watts* charges, was, according to the court's August 18, 2015 minute order, to "be read in conjunction with the orders made in court on August 17, 2015." Since we have no record of the oral proceedings from August 17, 2015, these challenges are forfeited.

Finally, Laurence failed to provide us with all of the documents necessary for our review of the court's ruling regarding the characterization of Maria's healthcare subsidy. As discussed above, based on Potter's deposition, the court determined that the healthcare subsidy provided by the University to Maria is her separate property. Although the stipulated order regarding Potter's deposition included "all attachments" to Potter's deposition and email correspondence and attachments from Potter to counsel, Laurence only provided us with five out of 109 pages of attachments. Further, Potter testified that the following documents governed Maria's entitlement to health benefits: University of California Retirement System, the Retirement Plan; Annuitant Health Coverage; Group Insurance Regulations; and Annuitant Health and Welfare Plans. None is in the record on appeal. We decline to find error on a silent record, and thus infer that substantial evidence supports the court's finding on this issue.

2. Based on the limited record, the trial court did not err.

As acknowledged by Laurence, community property orders are reviewed on appeal under the deferential abuse of discretion standard. (*In re Marriage of Cooper* (2008) 160 Cal.App.4th 574, 579-580.) Similarly, a motion for attorneys' fees in a marital dissolution action is left to the sound discretion of the trial court and will not be overturned absent an abuse of that discretion. (*In re Marriage of Huntington* (1992) 10 Cal.App.4th 1513, 1523.) We review de novo the court's characterization of Maria's healthcare subsidy as community or separate property. (See *In re Marriage of Sonne* (2010) 48 Cal.4th 118, 124.) On the limited record presented, Laurence has not shown any error by the trial court.

We begin with the court's characterization of Maria's healthcare subsidy as separate property. In general, all property that a spouse acquires during marriage before separation is community property. (Fam. Code, §§ 760, 770.) Community property may include the right to retirement benefits that the employee spouse accrues as deferred compensation for services rendered. (*In re Marriage of Green* (2013) 56 Cal.4th 1130, 1134.) This case, however, does not involve Maria's pension or retirement income. It involves her post-retirement participation in the employer's health

care plan, with a portion of the cost subsidized by her former employer. She earned her right to receive this subsidy after five years of employment with the University, or years before she married Laurence. Even assuming that Maria earned her right to this post-retirement subsidy in part by her employment during the marriage, *In re Marriage of Havins* (1996) 43 Cal.App.4th 414, 423 (*Havins*), and *In re Marriage of Ellis* (2002) 101 Cal.App.4th 400, 407-409, hold this benefit to Maria is not property divisible as community property. "[A]lthough the right to continuation of subsidized health care coverage without evidence of good health is itself a property right that has some value, the right is not subject to valuation and division at the time of dissolution when the employee or retiree continues to pay for the health insurance with his separate funds. In such a case, there is simply no community asset to divide." (*Havins*, 43 Cal.App.4th at pp. 423-424.)

As for the value of the marital residence, before trial the parties stipulated that the value was $1,175,000. To the extent that Laurence contends that the agreed-upon value for the home was contingent on a trial date of July 7, 2014, nothing in the record indicates that he sought to have the stipulation set aside on that basis. To be sure, during a post-trial proceeding held on March 13, 2015, Laurence's trial counsel mentioned, in passing, that "if [the agreed-upon] value has gone up substantially, then we may find it worthwhile to argue that his share should be increased based on the [home's] new value." However, when Maria's counsel objected, Laurence's attorney never followed up, and never made a formal request to increase the value of the home or set aside the stipulation.

The parties also agreed that Laurence's community property interest in Maria's University pension "shall be divided equally by way of Qualified Domestic Relations Order (QDRO)," with each party sharing the cost of preparing the QDRO. To the extent Laurence is challenging the equalization of the parties' retirement accounts with a QDRO, his counsel accepted this ruling without protest. Although Laurence raises other issues involving the QDRO, the division of retirement accounts, and the court's refusal to award him interest before the judgment was entered, he fails to support his

contentions with reasoned argument and citations to authority. (See *Kim v. Sumitomo Bank* (1993) 17 Cal.App.4th 974, 979 [appellate court not required to consider points not supported by citation to authorities or record].)

We conclude by returning to the court's denial of both parties' requests for attorneys' fees. Laurence contends that the court's minute order denying his request appears to be based on impermissible factors and is not supported by substantial evidence. As we discussed before, we cannot evaluate this argument because the court based its ruling on the trial evidence and Laurence failed to provide us with the reporter's trial transcripts and exhibits. "Where no reporter's transcript has been provided and no error is apparent on the face of the existing appellate record, the judgment must be *conclusively presumed correct as to all evidentiary matters*. To put it another way, it is presumed that the unreported trial testimony would demonstrate the absence of error." (*Estate of Fain* (1999) 75 Cal.App.4th 973, 992.)

DISPOSITION

The judgment is affirmed. Maria is awarded her costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

LAVIN, J.

WE CONCUR:

EDMON, P. J.

STRATTON, J.*

---

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.